

Eel Weir Hydropower Project WQC

- Appeal filed by Charles M. Frechette

NOTICE OF APPEAL
WATER QUALITY CERTIFICATION
S.D. WARREN COMPANY
EEL WEIR HYDROPOWER PROJECT
#L-19937-33-J-N

September 26, 2011

TO: Chair, Board of Appeal
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333 0017

FROM:
Charles M. Frechette
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Sebago, Maine 04029

There are thousands that recreate in all areas of the 28,000 acres of one of New England's most unique and valuable resources, Sebago Lake. For over 100 years the water of the lake has been at the mercy of Presumpscott River dam owners and the industrial revolution. Since the first Lake Level Management Plan of 1991, that plan has been revised to help reduce impacts to lake users and property owners, while still allowing for generation of electricity. For the last 100 years or more the lake has been and its levels created by outflow into the river without regard for inflow coming into the lake, aquatic habitat of the lake, or navigational interests of the lake.

The 401 water quality assessment is designed to ensure that there is enough water quality and quantity to sustain recreation, navigation, and aquatic habitat, and they are not negatively impacted at the expense of the applicant's actions. The 401 issued to S.D. WARREN fails on all counts. It accepts without challenge or change the Flow based plan that allows Warren to drop the lake to 262 msl before minimum flows are required. Even at this low level, the minimum flows of the plan have been increased over historical levels for droughts, in order to mitigate problems in Dissolved Oxygen caused by two dams in the Presumpscott River owned by the applicant. They seek to resolve problems caused by those dams by causing thousand acre dewatering of Sebago Lake aquatic habitat that the US Fish and Wildlife, Maine Inland Fisheries and Wildlife biologist, and "evidence of record" show to harmful, and degrading.

The applicant has not shown that they would be severely impacted from mitigation of their Presumpscott River dam Dissolved Oxygen problems, by releasing/spilling more water and thus less retention of water in those dams. The reduction of DO from 7.0 to 6.5 ppm in a 165 acre impoundment with little or no wetlands could never come close to the impacts of dewatering 2000 acres of Sebago Lake. Sebago Lake is one of only ten lakes over 10,000 acres in Maine.

Its average depth of 101 feet and large size makes it ideal for large boats (21 foot plus) for an inland lake, and the economy of the "lakes region" depends on safe and navigable water levels. Compared to any recreation behind the dams on the river (if there is any) Sebago Lake generates 17 million or more just in sales and is used by thousands of people for boating and fishing.

Those of us represented in this appeal for sensible management of the lake and a lake level plan that looks not to the past, but forward for the thirty years of the license, agree that it is time for Sebago Lake, the greater resource, to be managed first for the lake (in line with Best Management Practices for other large New England Lakes) and the benefit of its larger number of users, economy, and acres of aquatic habitat, and request a Public Hearing and Appeal the Flow Plan as presented in the Eel Weir Hydropower Project #L-19937-33-J-N.


Charles M. Frechette

The persons listed below have been contacted and are concerned that the lake Flow Plan will negatively impact their lives, the ecology and economy of, and Navigation on Sebago Lake:

Robert Hennick, Sebago Pines Property Owners Association
Steve Nicoli, Sebago Lake Land Owners & Users Association
Robert Calileo, Sebago Harbor Shores Association
Don Thombs, Point Sebago Resort
Jeff Richardson, Richardson's Boat Yard
Phil Michaud, Panther Run Marina
Merrill Rollins, Kettle Cove Marina
Alice Darlington, Kettle Cove
Joe Poliquin, Sebago Boating Club

BASIS FOR APPEAL

1. Aggrieved Status. Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.

Loss to public of Navigable waters in the Songo River.

Loss to public of Navigable waters in Sebago Harbor Cove.

Loss to public of Navigable water in the North West River.

Loss to public of Navigable water in all areas of Sebago Lake below 263.5 msl.

Loss of boat slips, fuel sales, service, accessory sales, storage (no access in September, October, early November, (income) due to low water levels below 263.5 msl.

De-watering of wetlands, and loss of aquatic habitat.

Loss of lake access for general public at boat ramps and loss of recreational opportunity.

Loss of property values to towns and shorefront owners due to loss of lake access.

Low water making shallow areas, more shallow during the "growing" season, increasing light and warming the bottom un-naturally, increasing milfoil and weeds.

Loss and degradation of littoral zone, with harm to all species of fish that use the littoral zone at some stage of their lives in turn affects fishing and economy of lake (example Turtle Cove).

\$17M marine economy jeopardized for minor Loss of generation at two Presumpscot River dams.

Increased expense and need for dredging, and increased environmental impacts of dredging (many areas cannot feasibly dredge to compensate for lake levels below 263.5 msl.).

2. The findings, conclusions or conditions objected to or believed to be in error. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal

See specific appeal to items in 401.

Impact studies are using already degraded habitat as a baseline for comparison to justify "no significant impacts" to these already impacted areas.

The 401 requires more release of water from lake to mitigate river low Dissolved Oxygen instead of release of more water through the Presumpscott River dams that are causing the problem (SAPPI makes more money with lake option).

Inadequate water storage in the lake to compensate for water shortages during drought conditions.

Minimum flow rate is too high and applied too late to prevent extreme low water situations during water shortage situations.

Statements by DEP and IF&W that lake will be maintained above the current LLMP is contradictory regarding actual water levels that Warren/SAPPI is allowed to achieve before minimum flow is required.

3. The basis of the objections or challenge. If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.

The plan ignores documented benefits of alternate flow plans already considered by the State and DEP.

This plan has been virtually "rubber stamped" by the DEP without the benefit of input from the public as required by chapter 2: Rules concerning the Processing of Applications and Other Administrative Matters.

Page 14. (7) Projects requiring new or amended licenses involving more than two bureaus.

The 401 water quality assessment for Sebago Lake has involved the Dept. of Conservation, IF&W, the Federal Energy Regulatory Commission, the USF&W Service, and the FERC Licenses Required for all the Dams on the Presumpscott River. The 401 has direct influence over the license for discharges from Portland Water District Gorham/Westbrook sewage treatment plants.

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Board assumption of jurisdiction over an application.

c. (4)

Is of substantial public interest. An application is of substantial public interest if the project has the potential to affect a broad geographic areas or a natural resource of statewide significance, or has generated more than local interest.

Sebago Lake is a New England resource. The fact that there has been little interest is that the applicant nor the DEP has had a single public hearing, or notified the public of its intent to accept and change the current Lake Level Management Plan.

4. The remedy sought. This can range from the reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

Flow Plan 262 msl minimum before required to go to minimum flow amended to:

No lower than 264' April 1 – October 15;

No lower than 263' November 1 – April 1

Minimum Flow is 15,000 cfm.

5. All the matters to be contested. The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

See response to the 401 for specific topics found to be in error, weak evidence of record and contested.